



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 26 2016

REPLY TO THE ATTENTION OF:
E-19J

Jamie MacAlister
Environmental Review Manager
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, Minnesota 55101

Re: U.S. EPA Scoping Comments for Enbridge Energy, Limited Partnership's Line 3
Replacement Project Environmental Impact Statement.

Dear Ms. MacAlister:

This letter with enclosure provide EPA's scoping comments for your consideration as the Minnesota Department of Commerce (MDOC) prepares the state environmental impact statement (EIS) for the above referenced Line 3 Replacement Project in Minnesota.

Given the potential environmental impacts, and level of public and tribal interest, we appreciate the opportunity to comment on the scope of MDOC's EIS. We look forward to reviewing the Draft EIS (DEIS). Please send EPA one paper copy and five CDs of the DEIS when MDOC makes it available for public review and comment.

If you have any questions or wish to discuss our comments please contact me by phone: 312/886-2901 or email: westlake.kennth@epa.gov, or Virginia Laszewski of my staff by phone: 312/886-7501 or email: laszewski.virginia@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth A. Westlake", is written over a horizontal line.

Kenneth A. Westlake, Chief
NEPA Implementation Section
Office of Enforcement and Compliance Assurance

Enclosure: 1

cc: Scott Ek, Energy Facilities Planner, Minnesota Public Utilities Commission,
Scott.ek@state.mn.us
Chad Konickson, Chief, Regulatory Branch, U.S. Army Corps of Engineers,
St. Paul District, MN, chad.konickson@usace.army.mil
Peter Fasbender, U.S. Fish and Wildlife Service, peter_fasbender@fws.gov

Darla Lenz, Forest Supervisor, Chippewa National Forest, U.S. Forest Service, 200 Ash Avenue NW, Cass Lake, Minnesota 56633

Jamie Schrenzel, Minnesota Department of Natural Resources (MnDNR), Environmental Review Unit, Jamie.Schrenzel@state.mn.us

Michelle Beeman, Deputy Commissioner, Minnesota Pollution Control Agency, Michelle.Beeman@state.mn.us

Melanie Benjamin, Chief Executive Officer, Mille Lacs Band of Minnesota Chippewa, Melanie.benjamin@millelacsband.com

Carri Jones, Chairwoman, Leech Lake Band of Minnesota Chippewa, Carri.jones@llbo.org

Levi Brown, Director, Environmental-Land Department, Leech Lake Band of Ojibwe, levib@lldrm.org

Wally Dupuis, Chairman, Fond du Lac Band of Minnesota Chippewa, 1720 Big Lake Road, Cloquet, Minnesota 55720

Steven Clark, Co-Chair, White Earth Band of Minnesota Chippewa, 25974 7th Ave. North, Ogema, Minnesota 56569

Ben Callan, Bureau of Environmental Analysis and Sustainability, Wisconsin Department of Natural Resources, 101 S. Webster Street, Madison, Wisconsin 53703

**U.S. EPA Scoping Comments to Minnesota Department of
Commerce/Public Utility Commission Concerning Enbridge Energy,
Limited Partnership Proposed Line 3 Replacement Project**

EPA reviewed Minnesota Department of Commerce (MDOC) Environmental Assessment Worksheet / Draft Scoping Decision Document (EAW/DSDD) for the Line 3 Replacement (L3R) Project, dated April 8, 2016. EPA generally agrees with the type and level of information and analysis MDOC proposes for the state environmental impact statement (EIS).

In addition, EPA offers the following scoping comments for MDOC consideration when preparing the EIS documentation for the portion of Enbridge Energy's L3R Project located in Minnesota.

Description of Proposed Enbridge Project and Connected Actions – The EAW/DSDD discloses that Enbridge proposes to construct and operate the L3R Project. The project replaces Enbridge's existing 34-inch-diameter pipeline with a new 36-inch-diameter pipeline and associated facilities. The existing pipeline currently transports Canadian tar sands crude oil from the Joliette Valve in Pembina County, North Dakota, to Clearbrook, Minnesota, and terminates at an existing terminal in Superior, Wisconsin. As proposed, L3R would follow the existing Enbridge mainline corridor west of Clearbrook and be co-located with the proposed Sandpiper Pipeline east of Clearbrook to Superior. The increased pipe diameter allows for an operating capacity of 760,000 barrels per day (bpd) from its current capacity of 390,000 bpd. The L3R route is approximately 363 miles long, of which 337 miles are in Minnesota, replacing 282 miles of the existing Line 3 pipeline. Associated facilities include four new pump stations east of Clearbrook and expansion of existing pump stations west of Clearbrook. Enbridge proposes to permanently deactivate existing Line 3 and have Line 3 remain in place following construction of the new L3R pipeline.

Recommendation: If the proposed new pump stations require the construction and operation of new transmission lines in order to operate, then we recommend the new transmission line projects be assessed (e.g., alternative routes, impacts, mitigation) as connected actions in the L3R EIS.

Description of Enbridge's Existing Pipelines and Right-of-Way (ROW) in Minnesota - In order to fully assess potential impacts to the environment, it is important to understand the condition and content of Enbridge's existing rights-of-way (ROW) where Line 3 is currently located.

Recommendation: EPA recommends the EIS include a description of Enbridge's existing ROW from Neche, North Dakota, through Minnesota, to Superior, Wisconsin, with emphasis placed on describing the Minnesota portion. This might include, but need not be limited to, identifying the existing ROW width/s, the number and location of existing access roads, and the number, purpose, age and condition of all existing pipelines within the ROW. Identify connections between pipelines located within the ROW. Identify and discuss types and amounts of

product/s transported by each pipeline and their maximum capacity. Include Enbridge's schedule/timeline for proposed abandonment and/or replacement of all existing ROW pipelines. Identify on maps and discuss in the text all known ROW pipeline leaks/spills and their cleanup status. In addition, we recommend the EIS identify whether Enbridge implements a vegetation management plan to control the growth and spread of noxious weeds and exotic species and identify the current status of invasive species within the existing ROW.

Emergency Preparedness Measures/Safety

Recommendation: EPA recommends the EIS disclose and discuss the adequacy of specific measures Enbridge has in place to identify and respond to pipeline leaks and emergencies along their ROW in Minnesota.

ALTERNATIVES

Line 3 Replacement – Alternative Sites

Alternative Sites are not defined in the L3R EAW Scoping Document. According to the EAW Scoping Document for MDOC's Sandpiper Pipeline Project (page 7) "*Alternative Sites*" are: "... other oil pipelines (existing or newly constructed) [that] may be used to meet the demand for oil delivery."

Recommendation: EPA recommends the MDOC DEIS assess the feasibility of using existing Enbridge Energy's Line 67 pipeline (a.k.a Alberta Clipper Pipeline) and/or combination of other existing ROW pipelines to transport the existing and proposed increased amounts of Line 3 product.

Line 3 Replacement Project and Sandpiper Pipeline Project - Alternative Routes

MDOC will prepare an EIS for each Project.

Recommendation: EPA recommends the MDOC DEISs identify and assess feasible routes located outside the Mississippi River headwaters area.

Line 3 Replacement – Rebuild Line 3 In-place Alternatives

Recommendation: We recommend the DEIS rigorously explore/discuss the feasibility of using the existing Line 3 pipeline location within the existing right-of-way for locating all or portions of the proposed Line 3 replacement pipe.

Line 3 Replacement – Abandonment of Existing Line 3

Recommendation: For those alternatives that include abandonment of existing Line 3 in place, EPA recommends the DEIS identify and discuss the specific protective measures that Enbridge would undertake and the Minnesota Public Utility Commission (MPUC) could/would require to reasonably ensure protection in perpetuity of surface and ground water quality, drinking water

supplies, aquatic resources (fish, wild rice, etc.) from existing known and unknown contaminants within and/or abutting the Enbridge ROW during and after abandonment activities. All permits and their associated permitting agencies required for abandonment should be discussed in the DEIS.

Forest and U.S. Forest Service Coordination

Existing Line 3 is located in the Chippewa National Forest. Enbridge currently proposes to abandon existing Line 3 in-place. In addition, it is possible that one or more alternative Line 3 replacement routes not currently identified might cross National Forest land.

Recommendation: EPA recommends MDOC coordinate with the U.S. Forest Service concerning Line 3 abandonment, as well as any potential alternative routes within U.S. Forest Service lands. Discuss the results of that coordination in the DEIS.

Vegetation, Pollinators, Wildlife and Wildlife Habitat

Recommendations: We recommend the DEIS evaluate and disclose the effects the alternatives will have on area ecology, including vegetation, pollinator species, wildlife and their habitats. Assess and disclose how these impacts will impact the general public and tribal recreational and subsistence hunting, fishing, harvesting and gathering activities/interests. We recommend a proposed mitigation plan with detailed mitigation steps that will be taken to minimize or eliminate adverse impacts be included in the DEIS.

Coordination with federal, state and tribal agencies

Recommendation: We recommend close and early coordination with the U.S. Fish and Wildlife Service (USFWS), U.S. Forest Service, State and tribal agencies on these and other wildlife-related issues. Include MDOC coordination efforts with USFWS and the Minnesota Department of Natural Resources (MnDNR) regarding federal and state-listed threatened or endangered species in the DEIS.

Vegetation Management Plan

Recommendations - As stated earlier, we recommend a vegetation management plan be prepared and included in the EIS to address, in part, control of plant intrusions. List the noxious and exotic plants that occur in the resource area. In cases where the weeds are a threat, EPA recommends the document detail a strategy for prevention, early detection of invasion, and control procedures for each species. Should an infestation occur or already be present, EPA supports integrated weed management (e.g., effective mix of education and prevention, biological, mechanical, chemical management, etc.). However, we encourage prioritization of management techniques that focus on non-chemical treatments first, with reliance on herbicides being the last resort in order to, in part, protect pollinator species. We recommend implementing yearly review and planning activity requirements for the above concerns, including evaluation of effectiveness to date. We also recommend the DEIS identify opportunities for Enbridge to revegetate using native plants that are pollinator species friendly when restoring the ROW after construction.

Historic, Archeological and Cultural Resources

Recommendation: We recommend the DEIS include/document MDOC's coordination with the Minnesota Historic Preservation Office (SHPO) as well as with all applicable tribes and Tribal Historic Preservation Offices (THPOs). This consultation might be documented, in part, by including copies of MDOC correspondence to and from the SHPO, tribes and/or THPOs and, if applicable, any signed Memoranda of Agreement.

Aquatic Resources / Wetlands and Streams

Recommendations: For the DEIS feasible alternative routes identified (along with associated proposed Line 3 abandonment areas), we recommend the DEIS provide details on the existing condition and potential impacts to aquatic resources; specifically: 1) baseline conditions of streams and wetlands proposed for impact, 2) any proposed functional losses to streams and wetlands due to the impact, 3) the widths of all proposed stream crossings, and) discussion on how these crossings will be accomplished.

Clean Water Act (CWA), 404(b)(1) Guidelines - The Scoping EAW (*Table 8 – Permits and Approvals*, page 52) identifies that a U.S. Army Corps of Engineers (Corps) Clean Water Act (CWA), Section 404 permit is required, a permit application has been submitted to the Corps, and is deemed complete by the Corps.

Recommendations: EPA recommends the DEIS:

- provide a level of information and analysis adequate to support compliance with the CWA, 404(b)(1) Guidelines;
- include direct, secondary and cumulative impacts analysis to aquatic resources;
- discuss and identify compensatory mitigation option/s for wetlands and streams;
- if mitigation banking is proposed as a compensatory mitigation option, provide details regarding the bank(s) (i.e. location, watershed, available credits and types of credits); and,
- identify and discuss anticipated timelines for permits (e.g., Corps 404 permit, etc.) as they relate to the DEIS timeline in the permit table and in the narrative after the permit table.

U.S. EPA, Region 5 Contacts for Clean Water Act Permits – Tribes

One or more of the following permits from U.S. EPA, Region 5 may be needed for any portion of Enbridge's Line 3 Replacement proposal and connected actions that would occur within the exterior boundaries of the Leech Lake, Fond du Lac, White Earth, Red Lake and/or Mille Lacs

Reservations:

- CWA Section 402 National Pollutant Discharge Elimination System (NPDES) discharge permit for discharges to waters of the U.S. from ground water pump out or process water associated with pipeline cleaning and/or hydrostatic pressure testing. For permit information, contact John Colletti, phone: 312/886-6106, email: colletti.john@epa.gov.
- CWA Section 402 NPDES construction stormwater permit. For permit information, contact Brian Bell, phone: 312/886-0981 email: bell.brian@epa.gov.
- CWA Section 401 water quality certification (except for the Fond du Lac Reservation whose tribal government provides its own Section 401 certification) for U.S. Army Corps of Engineers (Corps) CWA Section 404 wetland permits, water body crossings or discharge into waters of the U.S. For section 401 certification information, contact Janice Cheng, phone: 312/353-6424, email: cheng.janice@epa.gov.

Recommendation: EPA recommends MDOC include the CWA Section 402 permits and Section 401 certification contact information in the DEIS, including the permits table discussed previously. Please note that U.S. EPA CWA 402 discharge and stormwater permits, and Section 401 water quality certification only apply to the area within the exterior boundaries of a reservation.

Air Quality

Impacts to air quality can occur from construction, abandonment, operation and maintenance of a petroleum products pipeline and associated facilities.

Recommendations: We recommend the DEIS identify and discuss the potential impacts to air quality from construction, abandonment, operation and maintenance of the proposed project. Address and disclose the project's potential effect on: 1) all criteria pollutants under the National Ambient Air Quality Standards (NAAQS), including ozone; 2) any significant concentrations of hazardous air pollutants; and 3) protection of public health. Identify mitigation measures. We recommend the project proponents consider whether there may be opportunities to use clean diesel equipment, vehicles and fuels in construction and abandonment activities associated with the project and that MDOC identify and disclose any opportunities to utilize these measures in the DEIS.

Native American Tribal Coordination/Consultation

Recommendation: EPA recommends the DEIS identify, discuss and document MDOC's coordination/consultations with potentially affected tribes.

Environmental Justice

Recommendations: EPA recommends the DEIS consider whether a pipeline leak or spill that potentially affects wild rice and fish harvesting, turkey and waterfowl hunting, and other natural

resources would be disproportionately high and adverse to Native American populations. Any potential impacts to Native American populations regarding affected wild rice stands should be evaluated, in part, in the context of subsistence gathering (e.g. nutritional), economics, and cultural/spiritual practices. In addition, EPA recommends considering potential impacts to Native American populations and other populations from workers at pipeline construction work camps (e.g. potential physical or sexual assaults, drug use, and increased burden on essential services) and consider mitigation measures to address these potential impacts. EPA also recommends that in addition to government-to-government consultation with federally recognized tribes, the State provide outreach opportunities for tribal members and indigenous organizations to provide input on potential impacts and appropriate mitigation measures regarding a potential spill or other adverse impacts to Native American populations.

Wild Rice and Other Tribal Resources

Recommendations: EPA recommends the DEIS consider potential impacts to tribal treaty resources, such as tribal harvests of fish, wildlife, and plants, including wild rice, within Ceded Territories, as was undertaken in the *Wisconsin Department of Natural Resources' Draft Environmental Impact Statement for the Sandpiper and Line 3 Replacement Projects* (Feb. 2016). An analysis of potential pipeline leak or spill impacts to wild rice and other tribal resources in Ceded Territories should also include consideration of mitigation measures (including compensatory mitigation, as appropriate). EPA also recommends that the DEIS consult *Natural Wild Rice in Minnesota: A Wild Rice Study document submitted to the Minnesota Legislature by the Minnesota Department of Natural Resources February 15, 2008, Appendix B - Wild Rice Distribution and Abundance in Minnesota* (Appendix B) and other appropriate sources, including tribal governments, to identify wild rice locations that may potentially be impacted by a leak or spill. Appendix B states that the inventory of wild rice areas should be considered a work in progress and that further edits and review are needed. Other tribal resources in Ceded Territories that should be considered for impact analysis include, but are not limited to, traditional hunting areas for turkey and waterfowl and fish harvesting areas.

Cultural Resources, Data Sources Identified

Recommendation: EPA recommends the State consult with appropriate tribal governments and indigenous organizations to identify additional cultural resources (e.g., burial mounds, sacred sites) and Traditional Cultural Properties that may be impacted by the proposed project, including impacts from pipeline leaks or spills. For instance, the White Earth Tribal Government has designated Lower Rice Lake as a Traditional Cultural Property. In addition, *Geographic Information System (GIS) Mapping Analysis of Potential Community Vulnerabilities: The Proposed Sandpiper Pipeline in Northern Minnesota* (Feb. 2016) identifies 180 sites that serve as important cultural and archaeological resources within the pipeline buffer area. Additional information regarding the specific importance and details of each site is available through the White Earth Tribal Government, which holds the documentation on each site.

Rare and Unique Natural Resources

Recommendations: EPA recommends the DEIS consider whether any identified rare and unique natural resources qualify as an additional Pipeline and Hazardous Materials Safety Administration (PHMSA) High Consequence Area (HCA). *Natural Wild Rice in Minnesota: A Wild Rice Study, Appendix F, Stakeholder Comments* states the U.S. Fish and Wildlife Service has long recognized the ecological importance of natural wild rice stands and associated wetlands, such as the Rice Lake National Wildlife Refuge, for the purpose of managing these wetland habitats for the benefit of migrating and resident wildlife. More than 17 species of wildlife listed in the MNDNR's Comprehensive Wildlife Conservation Strategy as "species of greatest conservation need" use wild rice lakes as habitat for reproduction or foraging. EPA also recommends considering whether a potential pipeline spill could impact an HCA. Hazardous liquid pipelines that pass through an HCA, or that pass near enough that a release could reach the area by flow over land or within a river, stream, lake, or other means, are assumed to have the potential to affect that area.

Large Volume Spill Modeling

Recommendation: EPA recommends the DEIS consider as one of the seven representative sites to be used for large volume spill modeling a location that could maximally expose wild rice resources to a pipeline spill.

Cumulative Effects

Recommendation: EPA recommends the DEIS consider the cumulative spill and other impacts to wild rice and other tribal resources in Ceded Territories from all current and future pipelines in the vicinity.

Greenhouse Gases and Climate Change

Recommendation: Given the potentially high volumes of greenhouse gas emissions associated with the proposed actions, EPA recommends including a discussion of potential measures to reduce emissions associated with the production, transport, and refining of the crude oil to be transported in the EIS.

EPA notes that Line 3 will be subject to review during the U.S. Department of State's (DOS) announced National Environmental Policy Act (NEPA) process for the proposed capacity increase of Enbridge's Line 67. Line 3 is currently connected to Enbridge's Line 67 pipeline to transport higher volumes of Canadian oil sands crude across the border than Line 67's current permitted capacity. As a cooperating agency on the Line 67 draft EIS, EPA continues to work with DOS to improve consideration of GHG emissions and climate change for Lines 67 and 3.